IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.500 OF 2003

Ranbaxy Laboratories Ltd ..Petitioner.

v/s.

Agroman Systems private Ltd. ..Respondent.

Mr. Sachin Mandlik i/b. Udwadia and Udeshi, adv for the Petitioner.

Mr.Shyam Mehta with A. Fernandes i/b. J. Sagar & Associates, adv for the company.

CORAM: S.U. KAMDAR, J.

DATE : 9TH DECEMBER, 2004.

P.C.:

1. The present company petition is filed on the ground that the respondent company is indebted to the petitioner for the sum of Rs.33,74,612.54/-. It is the case of the petitioner that the company being unable to pay its debt the same should be wound up under section 434 of the Companies Act-I of 1956. The

brief facts of the case are as under :

2. On 26.2.1999 an MOU was executed between the petitioner and company known as Satwick Healthcare Private Limited for distribution of health care products manufactured by the petitioner. It is also an admitted position that the said MOU was mutually terminated by and between the parties. However in respect of the business carried out by the said company Satwick Private Limited there were large amounts outstanding as recoverable from various consumers.

3. In view of the aforesaid position, a tripartite agreement was executed between the petitioner, the respondent company and the said Satwick Health Care Pvt. Ltd Clause-3 thereof inter-alia provided that since the respondent company is interested in taking over the marketing of animal health products of the petitioner from Satwick health Care Pvt. Ltd., the same will be taken over on the basis of the terms and conditions set out therein under the terms and conditions of the said MOU, it was provided that the same will be for a period of five years. One of the terms and conditions of the said MOU was that the respondent company shall take over the business of the said Satwick Health Care including

its debtors and creditors pertaining to the marketing activities of animal health care products of the petitioner and that the respondent company. Thus in effect the respondent company became liable to record the outstanding debtors of the said Satwick Health Care and pay over the same to the petitioners herein.

4. On 23.1.2001 the petitioner company addressed a letter calling upon the respondent company that the respondent company has failed to recover the outstanding dues from the market and pay over to the petitioner under the terms of the said tripartite agreement. On 31.3.2001 the respondent company has acknowledged that there has been outstanding due and payable of sum of Rs.27.5 lacs. According to the petitioner a letter dated 31.3.2001 amounts to acknowledgement of liabilities. On 23.4.2001 another detailed letter was addressed by the respondent company to the petitioner inter-alia setting out therein the reasons for non recovery of the amount outstanding from various debtors. In the said letter they however assumed that they will recover the amount and pay over the same to the petitioner. Similar such letter is also addressed on 18.5.2001. However no payment has been effected by the respondent company. In an ultimate analysis a statutory notice was issued on 20.9.2002. There was no reply to the statutory

notice and thereafter the present petition is filed inter-alia for winding up of the respondent company.

5. The respondent company has filed affidavit in reply to the present petition and has inter-alia contended that the claim of the petitioner is not bonafide. It has been contended that infact there has been further mutual arrangement by and between the petitioner and the respondent company in which a new arrangement has been arrived at which the petitioner has not disclosed in the present petition before this court. It is also further contended in the affidavit in reply by the respondent company that there was defective supplies of drug Tiamullin and thus the respondent company has suffered and thus they are company entitled to counter claim.

6. The learned counsel for the respondent company has drawn my attention to the minutes of the meeting held between the parties on 14.3.2002. The said minutes of the meeting are set out in detail and inrespect of the same there is no dispute between the parties. The minutes of the meeting held on 14/3/2002 inter-alia states that it was agreed between the parties that certain dues of the outstanding payment of the erstwhile company is not possible to be recovered and inrespect of the said issue of

outstanding payment the matter will be treated as closed and there will be no further claims by the petitioner against the respondent company. Thereafter a further meeting took place in which it has been stated that the earlier dues which are no longer recoverable to be computed and to be written of by the parties.

7. Documents produced before me in the affidavit in reply are not disputed by the petitioner company. However the petitioner company submits that irrespective of the said agreement between the parties, the court must go on the basis of initial terms and conditions of tri-partite agreement and the admission of liabilities. It is the case of the petitioner that on the aforesaid basis there is no valid disputes and thus the respondent company should be wound up. I am unable to see any such admitted liabilities on the facts and circumstances of the present case. Admittedly there are minutes of the meeting which reflects an arrangement by and between the petitioner and the respondent company and under which both the parties have agreed to write off the outstanding dues. Further the said dues are initially of the said Satwick Health Care Pvt. Ltd. In my view the respondent company has raised bonafide dispute supported by necessary material and evidence in that

behalf. In the light of the aforesaid position, I do not find any merits in the present company petition and dismiss the same. However, there shall be no order as to costs.

SD/-